

EXHIBITS I-P

EXHIBIT I

Circulating Libraries and Video Rental Stores

Hal R. Varian*
University of California, Berkeley
Richard Roehl
University of Michigan, Dearborn

December 1996

1 Introduction

In this note we describe some interesting parallels between circulating libraries in England circa 1750-1850 and video rental stores in the U.S. circa 1980-1990. Both institutions evolved in a similar manner, which suggests that common economic and social forces were at work. What happened twice before in these two instances may happen yet again, and we think that the histories of these two industries may be helpful in understanding current and future developments in computer- and Internet-related media.

2 The rental market for books

According to Loomis [1994], “the history of libraries, particularly in the United States and Great Britain, during the 18th and much of 19th centuries is dominated by subscription libraries.” He distinguishes 3 types of “subscription libraries:” book clubs or societies, private subscription libraries, and commercial circulating libraries. Book clubs were essentially discussion groups and did not maintain permanent collections. Private subscription libraries were primarily the “. . . purview

* Research support from NSF grant SBR-9320481 is gratefully acknowledged. We also thank Michael Buckland for providing helpful comments and references.

3 THE RENTAL MARKET FOR VIDEOS

2

of an affluent minority." As such, "most attempted to collect standard works of permanent value in history, biography, travel, and natural science."

Circulating libraries, on the other hand, were profit-seeking enterprises. According to Loomis [1994], the first circulating library specifically created for rental was started by the bookseller Allan Ramsay in Edinburgh in 1725. By 1800, there were at least a thousand such libraries in Great Britain.

Circulating libraries, unlike the other forms of subscription libraries, specifically appealed to the popular taste, particular that of women. In part this was due to their interest in fiction and in part it was due to the fact that women were often not allowed to patronize other libraries.

The economic history of circulating libraries in Britain is remarkably similar to the history of video stores in the US. Both institutions were profit-seeking libraries, of a sort, which led to common patterns in their evolution.

3 The rental market for videos

The VCR was first viewed as a device for "time shifting" television shows to more convenient viewing hours. However, it soon became clear that there was a significant market in pre-recorded videos.

The first company to sell pre-recorded videos was Andre Blay's Video Club of America. He acquired fifty titles from Twentieth Century Fox studios that had all been previously sold to network TV. At the time of his first ad (in an October 1977 issue of *TV Guide*), there were fewer than 200,000 VCR owners and 9,000 of them joined Blay's video club.

By December of that year competition between RCA and Sony had pushed video machine prices to below \$1,000 for the first time. By the end of March 1978 Blay had sold 40,000 cassettes, and by the end of the year he had sold over 250,000.

While Blay explored the video *sale* market, the first individual to see the possibilities for a video *rental* market was one George Atkinson who ran a "Mickey Mouse little business" in Los Angeles called Home Theater Systems. Atkinson rented Super Eight film projectors, screens and old movies for \$25 a night. He bought one Beta and one VHS copy of each of the fifty Fox titles sold by Blay. In order to raise capital quickly he charged fifty dollars for an annual membership and one hundred dollars for a "life membership." Members could rent videos for \$10 a day. (Lardner [1987], p 176-7)

Atkinson encountered many skeptics. Most studio executives thought that

4 COST OF PURCHASE VERSUS RENTAL

3

American audiences preferred to buy rather than rent. At the time, video machines were a luxury that were only affordable by the wealthy who could easily afford to buy videos at the \$50 or so prices that were then charged. Since the video machine was widely expected to remain a luxury item, most Hollywood executives did not anticipate the emergence of a mass rental market. Atkinson's great insight was that that video machines would continue to decline in price and become a mass market item . . . and middle class users would prefer renting a video at \$3 to buying one at \$50.

The analog of the video rental store was the English "circulating library" mentioned above. These seem to have started in the early 1700s. By 1720 there were a few booksellers advertising books for hire in London and by 1740--50 there were at least 9 such "circulating libraries." This number grew to 19 between 1770--80 and 26 from 1790--1800. (Hanlyn [19xx]) *The Monthly Magazine* of April 1801 estimated there were "not less than one thousand" circulating libraries in England, many of which were located in spas and other vacation spots. (Hanlyn [19xx], p. 198.)

4 Cost of purchase versus rental

The primarily trade of the circulating libraries was renting light fiction. The motivation for the circulating library was the same as that of the video store: affordability. The early editions of *Tom Jones* cost more than an ordinary worker's weekly wage. Middle class people would not pay for novels, but they would happily rent them. According to McKillop [19xx], the primarily stimulus for the growth of circulating libraries was that the "increasing demand for light reading forced the adoption of some new device for rapid circulation." Circulating libraries provided this new economic model in the latter half of the eighteenth century, just as video rental stores provided a new economic model two hundred years later.

According to Plant [1974] "[During the sixteenth and seventeenth century] the reader had to rely on his own private library and those of his friends" since there were no public libraries. Most of the works available in private libraries were on serious topics such as religion, law, and the classics. A library of forty works or so was substantial." (Plant [1974])

The circulating libraries changed all this. By 1761 it was noted that "the reading female hires her novels from some country Circulating Library, which consists of about a hundred volumes." (Plant [1974])

EXHIBIT J

ASSOCIATED COURT REPORTERS, LLC
(205) 251-4227 / FAX (205) 251-4224

1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3

4 NETFLIX, INC., a Delaware corporation,

5 Plaintiff,

COPY

6
7 vs. CASE #:
C 06 2361 WHA (JCS)

8
9 BLOCKBUSTER INC., a Delaware
corporation, DOES 1-50

10 Defendants.

11

12

13

14

VIDEOTAPED

15

DEPOSITION OF LINDA VERIN

16

17

18

19

20

21

22

23

24

25

The Videotaped Deposition of LINDA
VERIN was taken before Lori E. Defnall,
on Thursday, April 5, 2007, at Najjar
Denaburg, P.C, Birmingham, Alabama,
commencing at 9:00 a.m., pursuant to the
stipulations set forth herein:

4/5/2007 Verlin, Linda V1

1 point, and to be recorded. But
2 nonetheless, you still answer my question.

3 A. Okay.

4 Q. Thank you. Now, let's take a
5 look at the Exhibit 168 first. Could you
6 describe this Exhibit 168, copy of the
7 color brochure for us, please?

8 A. Yes. This was my brochure to
9 present the idea of the franchise, Pop
10 Card, to potential franchisees. And
11 briefly, just to explain the business
12 idea.

13 Q. Now, when was this color
14 brochure produced?

15 MR. PAIGE: Object to the form

16 A. Well it says that it was
17 copyrighted in 1984. So, my assumption is
18 maybe that's when it was produced. Again,
19 the dates are a little bit foggy, it has
20 been 20 something years.

21 Q. Right. Absolutely.

22 A. It was all around '83, '84.

23 Q. So, it is during the timeframe
24 of 1983 and '84 while you had Pop Card
25 business?

4/5/2007 Verlin, Linda V1

1 describes, on this page?
2 A. It describes the basic idea of
3 Pop Card, which was that you get two tapes
4 at a time, that you can keep them as long
5 as you want, and that you can return them
6 as often as you'd like.

7 Q. And was that a rental plan you
8 used for Pop Card in 1983 and '84?

9 A. Yes, sir.

10 Q. And was that the rental plan
11 used in all of the Pop Card stores?

12 A. Yes.

13 Q. And that plan, basically
14 charges a monthly fee to your customer, to
15 each customer, and allows the customer to
16 take two tapes out at any given time?

17 MR. PAIGE: Object to the form
18 leading.

19 A. Yes.

20 Q. All right. Now, do you
21 remember, approximately, how many
22 customers of Pop Card were on this plan?

23 A. No.

24 Q. Do you have an estimate?

25 A. I believe that there was

21

23

4/5/2007 Verlin, Linda V1

4/5/2007 Verlin, Linda V1

1 A. Yes, sir.

2 Q. And the purpose of producing
3 this brochure was to make presentation to
4 potential franchisees?

5 A. Yes, sir.

6 Q. Now, what was your involvement
7 in producing this brochure?

8 A. Well, I wrote it. I hired
9 people to do the photography, to do the
10 layout, to do the printing. So, I mean
11 basically it was my brochure. I had an
12 in-house ad agency. So I used, other than
13 probably hiring a photographer, I used my
14 own people to produce it.

15 Q. So, you wrote the contents of
16 this brochure, correct?

17 A. Yes.

18 Q. And, if you would like to take
19 a look of the page marked at the bottom
20 right-hand corner, it's VR00000003.

21 A. Okay.

22 Q. And you see at the bottom
23 left-hand corner, you have compared --
24 well, let me ask you this: What is the --
25 the portion on the lower left-hand corner

1 between a hundred and three hundred per
2 store.

3 Q. And at the time when it had --
4 most stores you had about five, six
5 stores?

6 A. Yes.

7 Q. So, an average of between one
8 hundred to three hundred per store?

9 A. Yes.

10 Q. And the customers will be on
11 your plan?

12 A. Yes.

13 Q. Now, was that a subscription
14 plan?

15 MR. PAIGE: Object to the form.

16 A. Yes.

17 Q. And under that plan, each
18 customer will pay a monthly fee?

19 A. Yes.

20 Q. And you said the monthly fee
21 was about, how much a month?

22 A. It was a dollar a day, 30
23 dollars a month.

24 Q. All right. So it's basically
25 roughly calculated based on dollar per

22

24

4/5/2007 Verlin, Linda V1

1 day. So it's 30 dollar -- around 30
 2 dollar monthly plan?
 3 A. Yes.
 4 Q. And each customer would pay 30
 5 dollars per month, for the plan?
 6 A. Yes.
 7 Q. And under the plan, each
 8 customer could, at any time, take two
 9 tapes out?
 10 A. Yes.
 11 Q. And also, at any time, a
 12 customer could return one or two of those
 13 tapes and exchange for more tapes?
 14 A. Yes.
 15 Q. But the limit for each
 16 customer, at any given time, would be two
 17 tapes out?
 18 A. Yes.
 19 Q. And there was no limit as to
 20 how many times a customer could exchange
 21 the tapes during the month, were there?
 22 A. No. There was no limit.
 23 Q. All right. And there was no
 24 limit on how long a customer could keep
 25 the tapes, right?

4/5/2007 Verlin, Linda V1

1 A. Sure. We had all of our
 2 inventory on computer and we had bar codes
 3 on the tapes. And so, when people would
 4 check them in and check them out, that was
 5 all done on the computer. And then we had
 6 customer records, like, you know, their
 7 information, their names, their addresses,
 8 their phone numbers, and when their due
 9 date was for their monthly payment.

10 Q. So, on your computer, you had
 11 databases?

12 MR. PAIGE: Object to the form.
 13 A. I don't -- you know, I don't
 14 know if it was called that at that time,
 15 but we had them all in the computer. I
 16 can't remember the word database being
 17 used then, but maybe it was.

18 Q. So you had computerized record
 19 of your customers' rental?

20 A. Yes, sir.
 21 Q. So, for each customer, you had
 22 a record on your computer system for the
 23 customer, for example, the contact
 24 information, rental histories?

25 A. Yes.

27

25

4/5/2007 Verlin, Linda V1

1 A. That's correct.
 2 Q. Now, the customers on this
 3 subscription plan were not charged for any
 4 late fees, right?
 5 A. Correct.
 6 Q. And there was no due date under
 7 this plan, correct?
 8 A. Correct.
 9 Q. And that was the plan Pop Card
 10 used at the beginning, from the beginning,
 11 when you had this video rental business.
 12 correct?
 13 A. Yes.
 14 Q. And the plan was used
 15 throughout the two year period of '83 to
 16 '84, while you had the Pop Card stores?
 17 A. Yes.
 18 Q. In your store, in '83 and '84,
 19 for video rentals, did you use any
 20 computer to facilitate your rental
 21 business?
 22 MR. PAIGE: Object to the form.
 23 A. Yes.
 24 Q. And how did you use -- could
 25 you describe how the computer was used?

4/5/2007 Verlin, Linda V1

1 Q. Now --
 2 A. We had to keep track of the
 3 tapes, which tapes they had out
 4 Q. Okay. Now, so at any given
 5 time, by looking up on the computer, you
 6 would know what tapes the customer had at
 7 a time?

8 A. Yes.
 9 Q. And you would also know the
 10 payment histories of the customers?

11 A. Yes.
 12 Q. Okay. Do you, at any time, use
 13 any kind of a list in your rental
 14 business, for the customers?

15 MR. PAIGE: Object to the form.
 16 A. I'm not sure what you mean.

17 What do you mean by a list?
 18 Q. All right. Now, let's say --
 19 did any of your customer ever come in
 20 store and want a set -- wanted movies to
 21 rent and wants to have multiple movies to
 22 rent, but put it on a list?

23 MR. PAIGE: Object to the form.
 24 Lacks foundation, calls for speculation
 25 hypothetical.

28

26

4/5/2007 Verlin, Linda V1

1 A No. I think that there was a
 2 list in our computer of tapes that people
 3 wanted us to buy, but there was not a list
 4 of tapes that were out on loan, that
 5 somebody wanted to check out.

6 Q I see.

7 A So the buyer tried to keep a
 8 list to see what tapes to order. You
 9 know, and how many people had asked for
 10 maybe martial arts tapes, or whatever type
 11 action/adventure, chick flicks.

12 Q I see. Now, did Pop Card enter
 13 into a rental agreement with your
 14 customers?

15 A Yes.

16 Q For entering into this monthly
 17 subscription plans?

18 A Yes.

19 Q Now, was the rental agreement
 20 in writing?

21 A It was in writing, but I no
 22 longer have a copy of it. I don't think.
 23 I mean, I might, but I didn't find it
 24 easily.

25 Q The customer would sign a --

4/5/2007 Verlin, Linda V1

1 A No.
 2 Q Not in '83 or '84?
 3 A No.
 4 Q All right. Now, let me show
 5 you some of the documents. We will mark
 6 as Exhibit 172, a document previously
 7 identified as BB00012976.

8
 9 (Whereupon, Defendant's Exhibit
 10 Number 172 was marked for
 11 identification.)

12
 13 Q Ms. Verlin, could you take a
 14 look at this document?

15 A (Witness reviewing document.)

16 Okay.

17 Q Now, did you see at the bottom
 18 of this page, there's a word that says
 19 "Video Store January 1985"?

20 A (Witness reviewing document.)

21 Okay Uh-huh.

22 Q Do you remember seeing this
 23 article before?

24 A No.

25 Q All right. Do you know the

33

35

4/5/2007 Verlin, Linda V1

4/5/2007 Verlin, Linda V1

1 A They would sign an agreement,
 2 but they could -- every month -- I mean,
 3 they could decide to drop out at any time.
 4 They didn't have to sign up for a year.

5 Q I see. So, then there would
 6 keep being a subscription plan customer by
 7 paying the monthly fees?

8 MR. PAIGE: Object to the form.

9 A Yes.

10 Q All right. So as long as a
 11 customer's paying his or her monthly
 12 rental fees, he or she would be a customer
 13 on the plan?

14 A Yes.

15 Q I see. Now, you said you had
 16 about five to six franchise stores?

17 A Yes.

18 Q Now all the stores use the same
 19 plan you described earlier, right?

20 A Yes.

21 Q And each store had a computer,
 22 used as you described earlier?

23 A Yes.

24 Q With a computer network?

25 MR. PAIGE: Object to the form.

1 magazine, "Video Store"?

2 A No.

3 Q All right. In the picture in
 4 the middle of the page, there's a Pop Card
 5 on it. Is that a picture of one of your
 6 stores?

7 MR. PAIGE: Object to the form.

8 A Yes.

9 Q Do you recognize that picture?

10 A Yes.

11 Q Could you tell us what that
 12 picture shows?

13 A That's the picture of the
 14 prototype store, I believe. That was the
 15 store that I owned.

16 Q That was the store that you
 17 were in?

18 A Uh-huh.

19 Q Okay.

20 A Yes.

21 Q Now, if you see the paragraph,
 22 I'm sorry this print is maybe a little
 23 hard to read, the paragraph -- the column
 24 above the picture. It starts to say, "the
 25 flagship store as 13 hundred titles and

34

36

4/5/2007 Verin, Linda V1

1 350 club members. * do you see that?
 2 A Yes.
 3 Q Now the flagship store is the
 4 store that you were in?
 5 MR. PAIGE: Object to the form.
 6 A Yes.
 7 Q Was that the flagship store
 8 referenced to your original store?
 9 MR. PAIGE: Object to the form.
 10 lacks foundation.
 11 A Yes. It's a flagship store.
 12 right.
 13 Q That's the store picture below?
 14 A Yes, sir.
 15 Q Okay. And the column to the
 16 left, in the middle, start. Let's see.
 17 right around the middle part it says,
 18 "club members can check out one or two
 19 tapes when they join and keep the tapes as
 20 long as they want." Do you see that?
 21 A Yes.
 22 Q Does that accurately describe
 23 the subscription plan you described for us
 24 before, used by Pop Card?
 25 MR. PAIGE: Object to the form.

4/5/2007 Verin, Linda V1

1 recognize this specific newspaper story.
 2 but I remember the information.
 3 Q Or the event described in
 4 there?
 5 A Yes.
 6 Q Could you tell us about the
 7 event described in there, as you remember?
 8 A Sure. This was -- I sold my
 9 first franchise to, he wasn't a medical
 10 doctor, but I believe he was doctor, a
 11 PhD, was the professor and he was
 12 retiring. And he and his wife bought the
 13 franchise as sort of their retirement
 14 plan. And they bought it for Edmond,
 15 Oklahoma, which is a suburb north of
 16 Oklahoma City.
 17 Q And that became one of the
 18 franchise stores of Pop Card?
 19 A Yes.
 20 Q And for video rentals?
 21 A Yes.
 22 Q And do you remember they use
 23 same plan as you use in the original Pop
 24 Card store?
 25 A Yes. There was a requirement

37

39

4/5/2007 Verin, Linda V1

4/5/2007 Verin, Linda V1

1 A I believe so.
 2 Q All right. Then it keeps --
 3 then it says, "when they return them, they
 4 simply exchange them for one or two more
 5 tapes." Do you see that?
 6 A (Witness reviewing document.)
 7 Q It just right after sentence I
 8 just read earlier.
 9 A Uh-huh.
 10 Q So, that describes the plan you
 11 told us earlier of Pop Card, right?
 12 A Yes.
 13 Q Okay. Now let's go to the next
 14 one. I would like to mark it as Exhibit
 15 173, a document previously identified as
 16 BB00013058.
 17 (Whereupon, Defendant's Exhibit
 18 Number 173 was marked for
 19 identification.)
 20 Q Ms. Verin, can you -- do you
 21 recognize this document?
 22 A (Witness reviewing document.)
 23 Well I remember that -- I mean, I don't

1 of the franchise, like most franchises,
 2 you have a way to do business, and that
 3 was the requirement.
 4 Q I see. Thank you. Next
 5 document is going to be Exhibit Number
 6 174, please.
 7 (Whereupon, Defendant's Exhibit
 8 Number 174 was marked for
 9 identification.)
 10
 11 Ms. Verin, could you take a
 12 look at this document and see if you
 13 recognize it?
 14 A (Witness reviewing document.)
 15 Yes. It's an ad that we produced for the
 16 franchises. And actually, this isn't the
 17 original store on the address, but it
 18 might have been in one of our other stores
 19 or could have been a franchise. I don't
 20 recall. But the ad was, you know,
 21 standard ad that we produced in-house and
 22 gave to the franchisees to run.
 23 Q Now, was it an ad on the
 24 newspaper?

38

40

EXHIBIT K

CONFIDENTIAL - ATTORNEYS' EYES ONLY

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 -----

5 NETFLIX, INC., a Delaware)
6 corporation,)
7 Plaintiff,)
8 vs.) No. C 06 2361 WHA
9 BLOCKBUSTER, INC., a Delaware)
10 corporation, DOES 1 - 50,)
11 Defendants.)
12 -----

13
14 THIS TRANSCRIPT IS CONFIDENTIAL
15 ATTORNEYS' EYES ONLY, PURSUANT TO PROTECTIVE ORDER
16
17

18 Videotaped Deposition of TOM ADAMS, taken
19 at Three Embarcadero Center, 28th Floor,
20 San Francisco, California, commencing at
21 9:02 a.m., Friday, June 1, 2007, before
22 Cynthia Manning, CSR No. 7645.

23
24
25 PAGES 1 - 249

1

REDACTED

Pursuant to Civil Local Rules 7-11, 79-5, Paragraph 10 of the Protective Order entered October 23, 2006 and Blockbuster's Administrative Request to File Under Seal, Exhibit K to the Declaration of William J. O'Brien in Support of Blockbuster's Motion for Summary Judgment of Invalidity and Non-Infringement is redacted and lodged conditionally under seal.

EXHIBIT L

Page 2 • The West Side Spirit • Through December 23, 1985

Exclusive in New York



**7,000
Video Titles
"Take Home 3, 5, or 7 at Will!"**

HOW TO JOIN

Select one of our three exclusive package memberships. Then take home as many as 3, 5 or 7 cassettes on your first visit. Exchange them all year round, as often as you want. No more weekend jams. No late charges.

BONUS

For as low as \$10.00 extra per month—take home a cassette player from *Cine Club Video*. The player becomes your property after 2 years.

3 MEMBERSHIPS 3 PRICES*

- 3 Cassettes at home permanently **29⁹⁵**
 - 5 Cassettes at home permanently **39⁹⁵**
 - 7 Cassettes at home permanently **49⁹⁵**
- *monthly

SATISFACTION GUARANTEED

Your monthly club fee can be cancelled any month with a written notice. Simply notify our office one month in advance by mail. No hassle. No penalty.

JOIN NOW

Whether its comedy, mystery, western or musical. Videos for the entire family. *Cine Club Video* has it all.

And for your convenience—*Cine Club Video* has two new locations in the New York City area.

So don't hesitate. Take advantage of our exclusive package memberships today.



A Title Wave of Movie Entertainment

201 East 42nd Street at Third Avenue, NYC 818-1660
1345 Avenue of the Americas at 54th Street, NYC 247-5300

EXHIBIT
150

Hunt 323-07
deppbook.com

BB00013030

EXHIBIT M

It-had-to-happen department: Newest ways to rent videos

Anonymous

Changing Times (pre-1986); Oct 1985; 39, 010; ABI/INFORM Global

pg. 9

THE MONTHS AHEAD**ONE-STOP SHOPPING FOR TRAVELERS**

In addition to traveler's checks and credit cards, you'll soon have a third payment option for vacation travel: vouchers issued by Visa, MasterCard and Diners Club and sold through travel agents. To use them, you pay your agent in advance for hotel accommodations or car rentals and receive a voucher to be handed over when you use the service. Travel agents get commissions on the sale of vouchers; you get to fix your exchange rate, save your credit line for other purchases and carry less in traveler's checks. But you also have to tie up your cash in advance, and you lose some flexibility. You can get a refund on unused vouchers, but you may have to pay a cancellation fee.

Some travel agents will also begin selling travel irons, voltage converters, luggage and guidebooks, possibly at a discount, as a way to increase revenues.

IT-HAD-TO-HAPPEN DEPARTMENT: NEWEST WAYS TO RENT VIDEOS

Progress marches on in the battle for your videotape rental dollar.

► Creditron Video Centers, 24-hour credit card-activated vending machines that hold an average of 45 titles, are showing up throughout the country at convenience stores and other high-traffic locations.

► Video Hit Parade of Red Bank, N.J., specializes in setting up supermarket and convenience store video departments with a new twist:

For a one-time fee of \$49 and dues of \$8.75 a month, you can take out as many tapes as you want (although only one per night) at no additional charge. An extra tape costs 75 cents more.

► Membership at Manhattan's Cine Club Video, which carries 7,000 titles, can cost from \$29.95 to \$49.95 a month and entitles you to borrow three to seven tapes at a time at no extra charge and keep them as long as you want.

Not every new video venture gets off the ground. In the Washington, D.C., area one tape-rental service offered delivery to a convenient location in your neighborhood. Called Video-to-Go, it went . . . out of business.

INTEREST RATES AREN'T AS LOW AS THEY SEEM

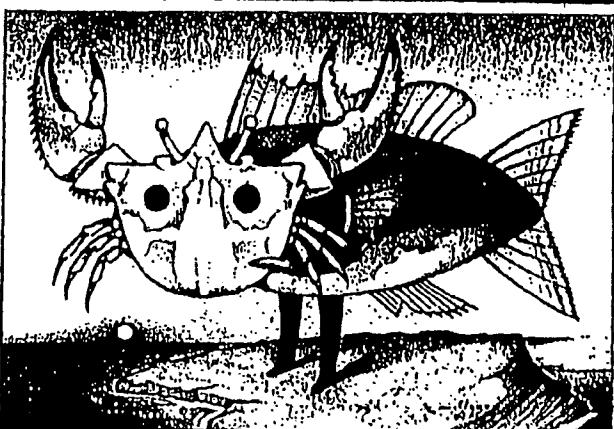
You may feel shortchanged if you're earning only 7% in the money-market fund that used to spew out 10% plus. But when you consider the real interest rate—nominal rate less inflation—you're probably earning as much on your money as savers have earned in the past.

For example, today's money-fund rate of around 7%, less about 4% for inflation, means a real return of 3%. Back in the mid 1960s most short-term savings were held in passbook accounts paying 4% and inflation was running at about 2%, for a pre-tax real return of 2%. If you first factor in an average tax rate of about 25% then

and 32% now, the final yields are about equivalent—1% versus 0.76%.

Of course, the higher your tax bracket, the worse you're faring. But the saver's heyday of the early 1980s—when inflation plummeted, interest rates hung high and real returns briefly topped 12% by one measure—was a historical aberration.

Even so, before-tax real returns on corporate bonds and three-month Treasury bills are still running substantially higher in this economic recovery than they have on average during the last five recoveries, according to the Center for International Business Cycle Research.

**THERE'S SOMETHING FISHY ABOUT THIS CRABMEAT**

If the price seems too good to be true, chances are it isn't crabmeat at all but surimi (pronounced su-ree-mee), a Japanese import made from fish, usually pollock, that's washed and ground into a paste, then shaped and flavored to look and taste like crabmeat. Surimi can also mimic other kinds of shellfish, such as shrimp, lobster and scallops.

Nutritionally, surimi is slightly inferior to the shellfish it's imitating and the fin fish from which it's made: 100 grams of surimi furnish about 28% of your recommended daily intake of protein, versus 33% for king crab legs and 30% for pollock. Surimi products are also higher in calories because sugar is often added as a preservative:

100 grams of scallops have 80 calories, compared with 97 for surimi.

But what surimi has going for it is the fact that it's usually less expensive than real shellfish. Industry experts predict a burgeoning U.S. market for surimi-based products, including snack foods.

How to tell if you're getting the real thing? FDA regulations require that surimi products be labeled *imitation* if package wording or pictures represent them as natural seafood. Surimi-based foods sold at deli counters or restaurants aren't covered by labeling regulations, except in Maine. But if you're offered "crabmeat salad" for \$3.25 a pound, it's probably a fish story.

OCTOBER 1985 9

EXHIBIT ✓

1163
4-3-07 Hastings
BB00004581

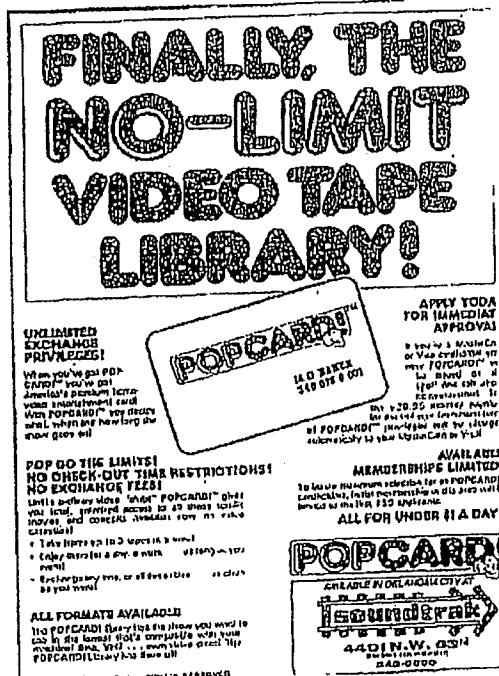
EXHIBIT N

EXHIBIT O

AD - 1d=450 :

Page 1 of 1

Publication: The Oklahoman; Date: Apr 2, 1982; Section: None; Page Number: 17



http://olive.newsok.com/Repository/ml.asp?Rcf=R_E91_LzE5ODivMDQyMDIjQWQwMTc 9/8/2006

DEFENDANT'S
EXHIBIT
114
BB00013052

EXHIBIT P

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 -----
5 NETFLIX, INC., a Delaware)
6 corporation,)
7 Plaintiff,)
8 vs.) No. C 06 2361
9 BLOCKBUSTER INC., a Delaware) WHA (JCS)
10 Corporation, DOES 1-50,)
11 Defendant.)
12 -----
13
14
15 Videotaped deposition of MARK RAMM,
16 at 416 Park Street, Charlottesville,
17 Virginia, commencing at 10:02 a.m.,
18 Friday, March 23, 2007, before
19 Nancy J. Martin, CSR No. 9504.

20
21
22
23
24
25 PAGES 1 - 189

1

1 us about your educational background, starting from 2 college, if you may. 3 A. I attended University of Virginia, 4 engineering department, graduated with a bachelor of 5 science in computer science engineering.	1 A. Yes. That's one word. 2 Q. So that's the name you use -- your business 10:12:15 3 use on the Internet? 4 A. That's one. We also use Tape Rental Library 5 on the Internet.
6 Q. And when was that, sir? 10:09:32 7 A. Graduated in '83. 8 Q. With the bachelor of science degree in '83? 10:09:38 9 A. (Nods head.)	6 Q. When did you start using AudioQueue on the 10:12:23 7 Internet? 8 A. Another good question. I didn't research the 9 exact dates of some of those things. I would have to 10 say it was around 2001.
10 Q. And after your graduation; what did you do, 10:09:47 11 sir? 12 A. I worked for IBM from 1983 to 1989. 13 Q. Now, what was your position at IBM at that 10:10:01 14 time period? 15 A. Systems analysis and performance of mid-range 16 processors.	11 Q. All right. Mr. Ramm, could you tell us what 10:12:40 12 was your main duties and obligations as an office 13 manager when you started with Tape Rental Library in 14 '89? 15 A. To run the office, the daily operations, 16 including hiring and firing people, managing the 17 people, performance reviews, the daily operation of 18 the mail coming in and going back out, handling the -- 19 the rental operation.
17 Q. And could you tell us about your work 10:10:12 18 experience after '89. 19 A. I went to work for Tape Rental Library as an 20 office manager. 21 Q. That begins in 1989? 10:10:26 22 A. Yes. 23 Q. And you have been with Tape Rental Library 10:10:33 24 since then? 25 A. Yes.	20 Q. So you had personal knowledge of Tape Rental 10:13:21 21 Library's business operations during that time period, 22 since '89? 23 MR. PAIGE: Object to the form. 24 THE WITNESS: Yes. 25 BY MR. CHEN
6	8
1 Q. So you started as a -- an office manager? 10:10:37 2 A. That's right. 3 Q. Could you tell us your employment history 10:10:44 4 with Tape Rental Library, change of titles and so on? 5 A. Sure. I didn't research this. I don't 6 remember the years exactly. But I started as an 7 office manager and in, I think it was 1995 or '96 my 8 wife and I purchased the business from the owners at 9 that time, and I became president at that time. 10 Q. So in around 1995, 1996 you became owner, you 10:11:23 11 and your wife became owners of the Tape Rental 12 Library? 13 A. Yes. 14 Q. And you remained the owner of Tape Rental 10:11:33 15 Library since that time? 16 A. Yes. 17 Q. Thank you. And other than Tape Rental 10:11:39 18 Library, did the business use other names? 19 MR. PAIGE: Objection to form. 20 THE WITNESS: We do business on the Internet as 21 AudioQueue, also. 22 BY MR. CHEN 23 Q. AudioQueue, that's -- 10:12:11 24 A. A-u-d-i-o-q-u-e-u-e. 25 Q. That's one word or just -- 10:12:11	1 Q. And since you and your wife became owners of 10:13:42 2 the Tape Rental Library in 1995, 1996, what was your 3 main functions or job obligations at Tape Rental 4 Library? 5 MR. PAIGE: Object to the form. 6 THE WITNESS: I continue as office manager to 7 this day, but added on other areas, such as managing 8 the finances of the company, managing the production 9 of the catalog and the sales. 10 BY MR. CHEN 11 Q. All right. And so you would have personal 10:14:21 12 knowledge as to the business operations of Tape Rental 13 Library since 1995, 1996 to present time? 14 A. Yes. 15 Q. Mr. Ramm, could you tell us what was Tape 10:14:40 16 Rental's business, Tape Rental Library's business in 17 1989? 18 MR. PAIGE: Object to the form. 19 THE WITNESS: We rented audiotapes. I don't 20 think audio CDs were around at that point. We rented 21 audiotapes, videotapes to companies and to 22 individuals. 23 BY MR. CHEN 24 Q. What were -- what were the contents of the 10:15:17 25 audio or videotapes rented to its customers?
7	9

1 video, but we don't offer that. So it's mainly -- the	1 list, and it would keep it on file for them.
2 video goes to mainly the company accounts.	2 Q. When did the company start to use the 10:28:00
3 Q. On the weekly basis plan? 10:25:29	3 computer program?
4 A. Yes.	4 MR. PAIGE: Object to the form.
5 Q. That would be similar to what you described 10:25:34	5 THE WITNESS: 1985.
6 earlier that a company may authorize multiple users?	6 BY MR. CHEN
7 MR. PAIGE: Object to form.	7 Q. 1985. Do you remember the name of the 10:28:10
8 THE WITNESS: Yes. Exactly that.	8 computer program, the company used?
9 BY MR. CHEN	9 A. The computer program?
10 Q. I think you're doing just fine, and we are 10:25:41	10 Q. Right. What program was that? 10:28:18
11 like carrying a conversation, but before you answer my	11 A. It's a database program called Unify.
12 question, if you could pause a couple of seconds.	12 Q. "Uni"?
13 Give Mr. Paige some time to make his objection on the	13 A. Unify.
14 record.	14 Q. The company was using that program in 1989 10:28:29
15 A. Okay.	15 when you joined the company?
16 Q. Let's go back to the -- the annual plans. So 10:26:00	16 A. Yes.
17 you said once a customer entered into an annual plan,	17 Q. And was the program used since 1989, 10:28:33
18 it will give you a list of the titles the customer	18 throughout the years?
19 wants for the tapes that they want to get?	19 A. Yes.
20 A. Typically, yeah. They would give us a list	20 Q. Until present time? 10:28:39
21 of titles.	21 A. Yes.
22 Q. And the -- and the list was written on order 10:26:27	22 Q. And the -- the database used in conjunction 10:28:42
23 form?	23 with that program would have data for each customer?
24 A. Yes.	24 MR. PAIGE: Object to the form.
25 Q. And how -- once -- once your company received 10:26:32	THE WITNESS: Yes.

18

20

1 that list, what do you do with it?	1 BY MR. CHEN
2 MR. PAIGE: Object to the form.	2 Q. When you said earlier that each individual 10:29:00
3 BY MR. CHEN	3 customer would have an account, could you describe
4 Q. In other words, do you put the list into 10:26:41	4 that to us, please?
5 computers or do you keep a hard copy of it?	5 MR. PAIGE: Object to the form.
6 MR. PAIGE: Object to the form. Leading.	6 THE WITNESS: Well, the database would have
7 THE WITNESS: We put the list into our computer	7 several tables in it to keep track of different
8 system, and we keep a hard copy for one year. There	8 things, and one of the tables in the database would be
9 may be some other cases where we would keep hard copy	9 for the customer's information, such as their name and
10 longer than that, but typically, if it was just a	10 address, and so there would be a record in that table
11 standard order, we would keep it in our files for a	11 for each customer.
12 year, and then they're purged after a year.	12 BY MR. CHEN
13 BY MR. CHEN	13 Q. And so for each customer, you would have data 10:29:32
14 Q. So the hard copy would be kept about the same 10:27:1	14 or information of its address and contacts and so on
15 length as the annual plan?	15 and so forth?
16 MR. PAIGE: Object to the form.	16 A. Yes.
17 THE WITNESS: Yes.	17 MR. PAIGE: Object to the form.
18 BY MR. CHEN	18 BY MR. CHEN
19 Q. And when you say you also put it -- the list 10:27:25	19 Q. And also for each customer, you would have a 10:29:48
20 in the computer, what do you mean?	20 record on the computer system for the titles that they
21 A. We have a computer program that allows us to	21 want ordered?
22 track the tapes in and out of the library, and it has	22 MR. PAIGE: Object to the form.
23 an account for each person, and each person's account	23 THE WITNESS: Yes.
24 has a place to enter the tapes that they want, and we	24 BY MR. CHEN
25 would type in the tapes that they ordered into that	25 Q. You said earlier that once you received the 10:30:02

19

21

1 BY MR. CHEN	1 Q. All right. Did a customer have -- have any	10:48:54
2 Q. Do you know as a fact that since April of 1998, a customer could use E-mail to change orders?	2 limits on how long they could keep a tape in their possession in listening or viewing?	
3 MR. PAIGE: Object to the form. Asked and answered. Lacks foundation.	3	
4 THE WITNESS: Yes.	4 A. No.	
5 BY MR. CHEN	5 Q. They --	10:49:08
6 Q. So once a request for changing an order was received, what would the company do with such a request?	6 A. Well, let me qualify that. They signed up for a year. The year was the limit. If they renewed at the end of the year, they could keep the same ones.	7
7 MR. PAIGE: Object to the form.	8 So if the rental period was a year and they stopped at the end of the year, they would be required to return them at that point. So within the year's subscription	9
8 THE WITNESS: We would print it out and make the change that the customer had requested.	10 there was no limit to how long they could keep an individual item.	11
9 BY MR. CHEN	11 Q. I see. Was there a limit on the number of tapes that the -- a particular customer can have at hand at any given time?	10:49:31
10 Q. When you say made the changes, do you mean someone at your company would make the change on your company's computer database?	12 MR. PAIGE: Object to the form.	
11 MR. PAIGE: Object to the form. Lacks foundation. Calls for speculation.	13 THE WITNESS: Yes.	
12 THE WITNESS: Yes.	14 BY MR. CHEN	
13 BY MR. CHEN	15 Q. And that limit would be two tapes?	10:49:43
14 Q. All right. So one of your staff would, based on the request, make the changes on the existing record for that particular customer?	16 A. Yes. If they signed up for a two-tape subscription, the limit would be two tapes.	17
15 MR. PAIGE: Object to the form. Lacks	18 Q. I see. So was there a different plan offered to the customer in terms of the number of tapes they could have at hand in a given time?	10:49:50
	19	
34		36

1 foundation. Calls for speculation. Incomplete hypothetical.	1 A. What time frame are we talking about?	
2 THE WITNESS: Yes.	2 Q. All right. Say a customer signs up on an annual plan --	10:50:05
3 BY MR. CHEN	3 A. No. I mean what year? Where are we in the years?	
4 Q. All right. Now, you said earlier that the customer would -- in the beginning, typically indicating about 12 tapes that they would want.	4 Q. Oh, I see. We're talking about prior to 1998.	10:50:15
5 A. Yes.	5 A. Prior to 1998. There was a variety of ways over the years that they could get additional material out, and again, I didn't research when this was changed. In -- in 1996, 1997 the way that they could get additional material out would be to buy an additional subscription. So if they wanted to buy two subscriptions, they could have four out at a time. If they wanted to buy three subscriptions, they could have six out at a time. Prior to that -- and, again, I'm not sure how far back it goes, but it was after 1989 when I started and before 1996 when I know we changed it, there was a process where they could have out additional tapes above their subscription level and pay for them at the weekly rate.	
6 Q. All right. And then you would send out the first two from the tape -- from the list to a customer?	6 BY MR. CHEN	
7 MR. PAIGE: Object to the form.	7 Q. So there would be a combination of annual and weekly plans?	10:51:27
8 THE WITNESS: Yes.	8 A. Yes.	
9 BY MR. CHEN	9	
10 Q. So what -- could you describe how the plan goes that -- that they will receive the first two and then they would make returns and they will send them additional tapes? Could you describe that process for us?	10	
11 MR. PAIGE: Object to the form.	11	
12 THE WITNESS: Sure. I'm not sure what additional description you're looking for. It sounds like -- I mean, it's exactly what you just said. I'm not sure what --	12	
13 BY MR. CHEN	13	
	14	
35		37

<p>1 BY MR. CHEN 2 Q. Okay. Now, on Page 4 of this document, it 11:08:52 3 looks like it's a blank form. Was that used -- the 4 form used by your company to send to a customer for 5 renewal purposes? 6 A. Yes. 7 Q. All right. When you send this form to a 11:09:08 8 customer for renewal, this form could be used by a 9 customer indicating whether he or she wants to renew 10 the plan with the company -- with an annual plan with 11 the company? 12 A. Yes. 13 Q. All right. Were there other forms to send to 11:09:35 14 customer, as well? 15 MR. PAIGE: Object to the form. 16 THE WITNESS: Yes. There is a form on the -- the 17 part is that is a copy of several pages of the 18 catalog. It says, "Audio Cassettes" on the front. 19 It's a catalog cover. 20 MR. CHEN: All right. Let's first mark this 21 document as Exhibit No. 25. 22 (The Reporter marked the document referred to 23 as Deposition Exhibit No. 25 for 24 identification.) 25 THE WITNESS: There's four pages here. The last </p>	<p>1 catalog? 2 A. These are four pages out of that catalog. 3 Q. Now, you indicated that that was a catalog 11:12:09 4 used in 1987? 5 A. 1987. It's on the third page. It's written 6 at the top, but it's also printed at the bottom on the 7 left. 8 Q. On the bottom left of the third page it says, 11:12:24 9 "1987 Catalog"? 10 A. Yes. 11 Q. Okay. Do you still have an original catalog? 11:12:29 12 A. Yes. I have one copy. 13 Q. You have one copy retained in your company's 11:12:36 14 record? 15 A. Yes. 16 Q. And this Exhibit 24 is a true and correct 11:12:42 17 copy of four of the pages from that original catalog; 18 correct? 19 A. Yes. 20 Q. And so if we want, we could have all the 11:12:55 21 pages copied from the catalog. You still have the 22 original; correct? 23 A. Yes. 24 Q. I see. Mr. Ramm, let me show you a few of 11:13:13 25 the documents that we received from you before. I'm </p>
<p>50</p> <p>1 page is the last page in that catalog, and that has 2 more of an -- an initial form that they would use to 3 start up. 4 BY MR. CHEN 5 Q. So the bottom half of the last page of 11:11:03 6 Exhibit 25 is a form that's used by your company to 7 send to a customer? 8 A. This was from a catalog of 1987. So this 9 would be, at that time, the initial form that we were 10 using for someone to start out. 11 Q. All right. 11:11:24 12 A. So when you asked if there were any other 13 kinds of forms that people would use, this is the 14 other kind. 15 Q. Now, looking at the first page of this 11:11:31 16 Exhibit 25, it says, "Audio Cassettes." 17 A. Uh-huh. 18 Q. Are these four pages true and correct copies 11:11:40 19 of one of Tape Rental Library's catalog? 20 A. Yes. 21 MR. PAIGE: Object to the form. I don't believe 22 it's a complete catalog, is it? 23 THE WITNESS: I didn't copy all the pages. 24 BY MR. CHEN 25 Q. So this is only the four pages of the 11:12:01 </p>	<p>52</p> <p>1 handing you a document for marking as Exhibit 25, a 2 document previously Bates numbered as BB 00012242 3 through BB 00012309. Let me give you a copy of this. 4 MR. PAIGE: I think it should be 26, Tony. 5 MR. CHEN: I'm sorry. Exhibit 26. Thank you, 6 Mr. Paige. 7 (The Reporter marked the document referred to 8 as Deposition Exhibit No. 26 for 9 identification.) 10 BY MR. CHEN 11 Q. So we have marked that as Exhibit 26. I have 11:15:26 12 a few. Let's just mark them together so we can talk 13 about them all together. 14 The next one is a document previously 15 identified Bates numbered as BB 00012311, 0 -- 16 BB 00012363, and that will be marked as Defendants' 17 Exhibit 27. 18 (The Reporter marked the document referred to 19 as Deposition Exhibit No. 27 for 20 identification.) 21 MR. CHEN: Next one, I'd like to have it marked 22 as Exhibit 28, previously identified by Bates 23 No. BB 0001234- -- -364 through BB 00012426. That 24 would be 28. 25 /// </p>

<p>1 shown in the fifth page of Exhibit 34 – 33 that has 2 one out of the sleeve and one inside the sleeve? 3 A. Yes. 4 Q. And then on the second and third line, it 13:58:12 5 keeps saying, "or use our convenient Time Saver List." 6 Is the Time Saver List referred there similar to the 7 one shown on the last page of Exhibit 30? 8 MR. PAIGE: Object to the form. 9 THE WITNESS: Yes. 10 BY MR. CHEN 11 Q. And also similar to the one shown -- the 13:58:45 12 photo in the middle of Page 4 of Exhibit 33? 13 MR. PAIGE: Same objection. 14 THE WITNESS: Yes. 15 BY MR. CHEN 16 Q. So you said the reason for calling that a 13:59:03 17 Time Saver List was because the customer -- customers 18 didn't have to, each time when they return a tape, 19 indicate what they wanted next? 20 MR. PAIGE: Object to the form. Leading. 21 THE WITNESS: Correct. 22 BY MR. CHEN 23 Q. But rather, they had a list on file with you, 13:59:24 24 with Tape Rental Library, which has the next tapes 25 listed there so the Tape Rental Library would know </p>	<p>1 process that way. 2 Q. Could you also describe how that list was 14:01:08 3 followed in -- by Tape Rental Library in providing 4 subsequent replacement to customers? 5 A. When the list came in, we would enter the 6 list onto the customer's account, specifically on the 7 part of the database that maintained that customer's 8 list of items that they wanted to get next, and they 9 would be maintained in the same order that the 10 customer asked for it on the written list, and as the 11 customer would return an item, they would get the next 12 item sequentially in their list if that one was 13 available to send. 14 Q. All right. And when you say, "entered into 14:01:57 15 the database," you meant the computer database; 16 correct? 17 A. Correct. 18 Q. All right. Now -- and you also indicated 14:02:03 19 earlier that a customer can make changes to the list 20 in a number of ways? 21 MR. PAIGE: Objection. Leading. 22 THE WITNESS: Yes. 23 BY MR. CHEN 24 Q. Now, tell us what happened when a customer 14:02:20 25 changed -- made changes to the list. </p>
<p>1 what tape to send to the customer; correct? 2 MR. PAIGE: Objection to the form. Leading. 3 Misstates prior testimony. 4 THE WITNESS: Yes. 5 BY MR. CHEN 6 Q. All right. Counsel made an objection to my 13:59:46 7 question saying I'm leading. I said something -- 8 anyway, he made his objection. Could you describe in 9 your own words as to the reasons of using a so-called 10 Time Saver List? 11 A. Sure. We felt that giving the customer an 12 opportunity to order more than one -- or more than two 13 cassette items at a time would be an advantage to them 14 and to us. It would be time savings to them to sit 15 down with the catalog less frequently and go through 16 and pick out 12 items or more or less that they wanted 17 and send that all in at one time, and then they could 18 go through several exchanges without having to go back 19 and pick up the catalog and find where they left off 20 and place another order. 21 And it was an advantage to us because if 22 somebody were busy, they might put off the next order. 23 So this way, if they ordered more in advance, then 24 they have it on file and they can just keep going 25 through the order. It's less disruptive to the </p>	<p>1 MR. PAIGE: Object to the form. Vague and 2 ambiguous. 3 THE WITNESS: There -- there were many ways that 4 they could make a change to a list. They could -- 5 some of the simpler ways is they could write back a 6 note with the tape that they returned saying, "I don't 7 like this series. Stop sending it," which would 8 simply mean discontinuing the series that they're in 9 and -- and removing that from the list and -- and 10 continuing with whatever was next. 11 They might say that they know they ordered a 12 tape on how to learn Spanish, and they want to move 13 that up to the top because they need it sooner rather 14 than later. So we would move that to the top of the 15 list for them and send that next. They might return 16 one of the selection cards with an order on it, even 17 though they had an order on file with us, which would 18 indicate that they want that ahead of the list on 19 file, and so we would -- depending on how many there 20 was, we might just send that so we would never even 21 get the list. 22 But if it was -- what they ordered on the 23 selection card was like a six-tape series, that would 24 need to be put on the list and the first part of that 25 sent, and that would be moved to the top of the list </p>

107

109

Pages 106 to 109